

Representative Michael E. Noel proposes the following substitute bill:

COMMITMENT TO MENTAL HEALTH

AUTHORITY

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael E. Noel

Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends portions of the Utah Human Services Code related to designated examiners and involuntary commitment hearings.

Highlighted Provisions:

This bill:

- ▶ creates and defines the terms:
 - physician designated examiner; and
 - mental health professional designated examiner;
- ▶ provides that, for cases involving the commitment of a person to a mental health authority, the court shall appoint two designated examiners, including at least one physician designated examiner, to conduct an examination of a proposed patient;
- ▶ provides that if a physician designated examiner is not reasonably available to conduct an examination and appear in court, the court may appoint two mental health professional designated examiners to conduct an examination of a proposed patient; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:



None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-602, as last amended by Chapters 22 and 303, Laws of Utah 2003

62A-15-631, as last amended by Chapter 303, Laws of Utah 2003

62A-15-703, as last amended by Chapter 171, Laws of Utah 2003

62A-15-705, as last amended by Chapter 195, Laws of Utah 2003

77-15-5, as last amended by Chapter 82, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-15-602** is amended to read:

62A-15-602. Definitions.

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, and Part 10, Declaration for Mental Health Treatment:

(1) "Adult" means a person 18 years of age or older.

(2) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area in which the proposed patient resides or is found.

(3) "Designated examiner" means ~~a licensed physician familiar with severe mental illness, preferably a psychiatrist, designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness or another licensed mental health professional designated by the division as specially qualified by training and at least five years' continual experience in the treatment of mental or related illness. At least one designated examiner in any case shall be a licensed physician. No person who is the applicant, or who signs the certification, under Section 62A-15-631 may be a designated examiner in the same case:]~~ a:

(a) mental health professional designated examiner; or

(b) physician designated examiner.

(4) "Designee" means:

(a) a physician who has responsibility for medical functions including admission and discharge[;];

(b) an employee of a local mental health authority[;]; or

(c) an employee of an agency that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.

(5) "Institution" means a hospital, or a health facility licensed under the provisions of Section 26-21-9.

(6) "Licensed physician" means:

(a) an individual licensed under the laws of this state to practice medicine[;]; or

(b) a medical officer of the United States government while in this state in the performance of official duties.

(7) "Local comprehensive community mental health center" means an agency or organization that provides treatment and services:

(a) to residents of a designated geographic area, operated by or under contract with a local mental health authority[;]; and

(b) in compliance with state standards for local comprehensive community mental health centers.

~~[(9)]~~ (8) "Mental health facility" means:

(a) the Utah State Hospital ~~[or other]~~;

(b) a facility that provides mental health services under contract with the division[;];

(c) a local mental health authority[;]; or ~~[organization that contracts]~~

(d) a facility that provides mental health services under contract with a local mental health authority.

~~[(10)]~~ (9) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to interact with and transport persons to any mental health facility.

(10) "Mental health professional designated examiner" means a licensed mental health professional designated by the division as specially qualified by training and at least five years of continual experience in the treatment of mental or related illness.

88 ~~[(8)]~~ (11) "Mental illness" means a psychiatric disorder:

89 (a) as defined by the current edition of the Diagnostic and Statistical Manual of Mental
90 Disorders published by the American Psychiatric Association ~~[which]; and~~

91 (b) that substantially impairs a person's mental, emotional, behavioral, or related
92 functioning.

93 ~~[(11)]~~ (12) "Patient" means an individual under commitment to the custody or to the
94 treatment services of a local mental health authority.

95 (13) "Physician designated examiner" means a psychiatrist or a licensed physician
96 familiar with severe mental illness, designated by the division as specially qualified by training
97 or experience in the diagnosis of mental or related illness.

98 ~~[(12)]~~ (14) "Serious bodily injury" means bodily injury ~~[which]~~ that involves a
99 substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious
100 disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or
101 mental faculty.

102 ~~[(13)]~~ (15) "Substantial danger" means the person, by his ~~[or her]~~ behavior, due to
103 mental illness:

104 (a) is at serious risk to:

105 (i) commit suicide~~[-];~~

106 (ii) inflict serious bodily injury on himself ~~[or herself]~~; or

107 (iii) because of his ~~[or her actions]~~ action or inaction, suffer serious bodily injury
108 because he ~~[or she]~~ is incapable of providing the basic necessities of life, such as food,
109 clothing, and shelter;

110 (b) is at serious risk to cause or attempt to cause serious bodily injury; or

111 (c) has inflicted or attempted to inflict serious bodily injury on another.

112 ~~[(14)]~~ (16) "Treatment" means:

113 (a) psychotherapy~~[-];~~

114 (b) medication, including the administration of psychotropic medication~~[-];~~ and

115 (c) other medical treatments that are generally accepted medical and psychosocial
116 interventions for the purpose of restoring the patient to an optimal level of functioning in the
117 least restrictive environment.

118 Section 2. Section **62A-15-631** is amended to read:

**62A-15-631. Involuntary commitment under court order -- Examination --
Hearing -- Power of court -- Findings required -- Costs.**

(1) (a) Proceedings for involuntary commitment of an individual who is 18 years of age or older may be commenced by filing a written application with the district court of the county in which the proposed patient resides or is found, by a responsible person who has reason to know of the condition or circumstances of the proposed patient ~~[which]~~ that lead to the belief that the individual is mentally ill and should be involuntarily committed. ~~[That application shall]~~

(b) The application described in Subsection (1)(a) shall:

(i) be accompanied by:

~~[(a)]~~ (A) a certificate of a licensed physician or a designated examiner stating that:

(I) within a seven-day period immediately preceding the certification the physician or designated examiner has examined the individual[;]; and [that he]

(II) the licensed physician or designated examiner is of the opinion that the individual is mentally ill and should be involuntarily committed; or

~~[(b)]~~ (B) a written statement by the applicant that the individual has been requested to, but has refused to, submit to an examination of the individual's mental condition by a licensed physician or designated examiner[;]. ~~That application shall;~~

(ii) be sworn to under oath; and [shall]

(iii) state the facts upon which the application is based.

(2) Prior to issuing a judicial order, the court may:

(a) require the applicant to consult with the appropriate local mental health authority[;];
or ~~[may]~~

(b) direct a mental health professional from [that] the appropriate local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.

(3) ~~[If]~~ (a) The court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination if:

(i) the court finds from the application, from any other statements under oath, or from

any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness which poses a substantial danger, as defined in Section 62A-15-602, to himself, others, or property requiring involuntary commitment pending examination and hearing; or~~[,if]~~

(ii) the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily~~[,the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination. Within].~~

(b) Subject to Subsection (3)(d), within 24 hours of the issuance of the order for examination, a local mental health authority or its designee shall report to the court, orally or in writing, whether:

(i) the patient is, in the opinion of the examiners, mentally ill~~[,whether];~~

(ii) the patient has agreed to become a voluntary patient under Section 62A-15-625~~];~~ and ~~[whether]~~

(iii) treatment programs are available and acceptable without court proceedings.

(c) Based on ~~[that]~~ the information described in Subsection (3)(b), the court may, without taking any further action~~];~~

(i) terminate the proceedings; and

(ii) dismiss the application. ~~[In any event, if the examiner reports orally, he]~~

(d) If the report described in Subsection (3)(b) is made orally, the examiner shall immediately send the report in writing to the clerk of the court.

(4) (a) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient:

(i) prior to, or upon, placement of the proposed patient in the custody of a local mental health authority; or~~];~~

(ii) with respect to any individual presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court.

181 (b) A copy of ~~[that]~~ the order of detention described in Subsection (4)(a) shall be
182 maintained at the place of detention.

183 (5) (a) Notice of commencement of ~~[those]~~ the proceedings described in Subsection
184 (4)(a) shall be provided by the court as soon as practicable to:

185 (i) the applicant~~[-]~~;

186 (ii) any legal guardian~~[-]~~;

187 (iii) any immediate adult family members~~[-]~~;

188 (iv) legal counsel for the parties involved~~[-]~~; and

189 (v) any other ~~[persons whom]~~ person designated by the proposed patient or the court
190 ~~[shall designate. That]~~.

191 (b) The notice described in Subsection (5)(a) shall ~~[advise those persons]~~ state that a
192 hearing may be held within the time provided by law.

193 (c) If the patient ~~[has refused]~~ refuses to permit release of information necessary ~~[for~~
194 ~~provisions of notice under this subsection]~~ to provide the notice described in Subsection (5)(a),
195 the extent of notice shall be determined by the court.

196 (6) Proceedings for commitment of an individual under the age of 18 years to the
197 division may be commenced by filing a written application with the juvenile court in
198 accordance with the provisions of Part 7.

199 (7) The district court may, in its discretion, transfer the case to any other district court
200 within this state, provided that the transfer will not be adverse to the interest of the proposed
201 patient.

202 (8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the
203 issuance of a judicial order, or after commitment of a proposed patient to a local mental health
204 authority under court order for detention or examination, the court shall, subject to Subsection
205 (8)(b), appoint two designated examiners to examine the proposed patient.

206 (b) (i) Except as provided in Subsection (8)(b)(ii), the designated examiners described
207 in Subsection (8)(a) shall include at least one physician designated examiner.

208 (ii) Notwithstanding Subsection (8)(b)(i), the court may appoint two mental health
209 professional designated examiners to examine the proposed patient if the court determines that
210 a physician designated examiner is not reasonably available to conduct an examination or
211 appear in court.

(iii) The court may not appoint a person as a designated examiner in a case if that person made:

(A) the application described in Subsection (1)(a); or

(B) the certification described in Subsection (1)(b)(i)(A).

(iv) If requested by the proposed patient's counsel, the court shall appoint, as one of the designated examiners, a reasonably available qualified person designated by counsel.

(c) The examinations~~[-to be]~~ described in Subsection (8)(a) shall be:

(i) conducted separately~~[-shall be]~~; and

(ii) held at:

(A) the home of the proposed patient~~[-];~~

(B) a hospital or other medical facility~~[-];~~ or ~~[at]~~

(C) any other suitable place that is not likely to have a harmful effect on the patient's health.

~~[(b) The]~~ (d) If the proposed patient is not represented by an attorney, the examiner shall inform the proposed patient [if not represented by an attorney that, if desired, the patient does not have];

(i) that the proposed patient is not required to say anything~~[-];~~

(ii) of the nature and reasons for the examination~~[-];~~

(iii) that ~~[it]~~ the examination was ordered by the court~~[-];~~

(iv) that any information volunteered could form part of the basis for ~~[his or her]~~ the proposed patient's involuntary commitment~~[-];~~ and

(v) that findings resulting from the examination will be made available to the court.

~~[(c) (e) [A time shall be set for]~~ Except as provided in Subsection (8)(f), the court shall schedule a hearing to be held within ten calendar days ~~[of the appointment of the designated examiners, unless those examiners]~~ from the day on which the designated examiners are appointed under Subsection (8)(a).

(f) Notwithstanding Subsection (8)(e), the court may, without taking further action, terminate the proceedings and dismiss the application if the designated examiners described in Subsection (8)(a), or a local mental health authority or its designee informs the court ~~[prior to that hearing date that]~~ before the day of the hearing that:

(i) the patient is not mentally ill~~[-that he];~~

(ii) the patient has agreed to become a voluntary patient under Section 62A-15-625[;];
or ~~[that]~~

(iii) treatment programs for the patient are available and acceptable without court proceedings[~~, in which event the court may, without taking any further action, terminate the proceedings and dismiss the application~~].

(9) (a) ~~[Prior to the hearing]~~ Consistent with Subsection (9)(b), prior to the hearing described in Subsection (8)(e), an opportunity to be represented by counsel shall be afforded to every proposed patient[~~, and if neither the patient nor others provide counsel~~].

(b) If the proposed patient does not obtain counsel prior to the hearing described in Subsection (8)(e), the court shall:

(i) appoint counsel for the proposed patient; and

(ii) allow [him] counsel sufficient time to consult with the proposed patient prior to the hearing. ~~[In the case of an indigent patient]~~

(c) If the proposed patient is indigent, the payment of reasonable attorneys' fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or was found.

~~[(b)]~~ (d) (i) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to:

(A) appear at the hearing[~~, to~~];

(B) testify[;] at the hearing; and ~~[to]~~

(C) present and cross-examine witnesses.

(ii) The court may[~~, in its discretion,~~];

(A) receive the testimony of any other person[~~, The court may~~]; and

(B) consistent with Subsection (9)(d)(iii), allow a waiver of the patient's right to appear [only for good cause shown, and that cause shall be made a matter of court record.] at the hearing only upon a showing of good cause.

~~[(c) The court is authorized to]~~

(iii) The basis for a showing of good cause under Subsection (9)(d)(ii)(B) shall be placed on the court record.

(e) At the hearing described in Subsection (8)(e), the court may:

(i) exclude all persons not necessary for the conduct of the proceedings; and ~~[may;~~

(ii) upon motion of counsel, require the testimony of each designated examiner to be given out of the presence of any other ~~[examiners]~~ designated examiner.

~~[(d)]~~ (f) The hearing described in Subsection (8)(e) shall be conducted:

(i) in as informal a manner as may be consistent with orderly procedure~~[-]~~; and

(ii) in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.

~~[(e)]~~ (g) The court shall consider all relevant historical and material information which is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.

~~[(f)]~~ (h) (i) A local mental health authority or its designee, or the physician in charge of the patient's care shall, at the time of the hearing, provide the court with the following information:

(A) the detention order;

(B) admission notes;

(C) the diagnosis;

(D) any doctors' orders;

(E) progress notes;

(F) nursing notes; and

(G) medication records pertaining to the current commitment.

(ii) ~~[That information shall also be supplied]~~ The person that provides the information described in Subsection (9)(h)(i) to the court shall give a copy of that information to the patient's counsel at:

(A) the time of the hearing~~[-]~~; and ~~[at]~~

(B) any time prior to the hearing upon request.

(10) (a) The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (9)~~[(e)]~~(g), the court finds by clear and convincing evidence that:

~~[(a)]~~ (i) the proposed patient has a mental illness;

~~[(b)]~~ (ii) because of the proposed patient's mental illness he poses a substantial danger, as defined in Section 62A-15-602, of physical injury to others or himself, ~~[which]~~ that may

include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;

~~[(c)]~~ (iii) the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;

~~[(d)]~~ (iv) there is no appropriate less-restrictive alternative to a court order of commitment; and

~~[(e)]~~ (v) the local mental health authority can provide the individual with treatment that is adequate and appropriate to his conditions and needs.

(b) In the absence of the required findings ~~[of the court after the hearing]~~ described in Subsection (10)(a), the court shall forthwith dismiss the proceedings.

(11) (a) ~~[The]~~ Subject to Subsection (11)(b), the order of commitment shall designate the period for which ~~[the individual]~~ a person shall be treated.

(b) When ~~[the individual]~~ a person is not under an order of commitment at the time of the hearing, ~~[that period]~~ the commitment may not exceed six months ~~[without benefit of a review hearing. Upon such, unless a review hearing[, to be] is commenced prior to the expiration of the previous order[;].~~

(c) After the review hearing described in Subsection (11)(b), the court may enter an order for commitment ~~[may be]~~ for an indeterminate period, if the court finds by clear and convincing evidence that the ~~[required]~~ conditions described in Subsection (10)(a) will last for an indeterminate period.

~~[(b)]~~ (12) (a) The court shall:

(i) maintain a current list of all patients under ~~[its]~~ an order of commitment~~[- That list shall be reviewed to determine those] by the court;~~

(ii) review the list described in Subsection (12)(a)(i) to identify the patients who have been under an order of commitment for the designated period[- At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The]; and

(iii) notify the appropriate local mental health authority or its designee of the expiration of a commitment at least two weeks before the expiration.

(b) Upon receiving the notice described in Subsection (12)(a)(iii), the local mental health authority or its designee shall:

(i) immediately reexamine the reasons upon which the order of commitment was based~~[- If]; and~~

(ii) if the local mental health authority or its designee determines that the conditions justifying [that] the commitment no longer exist~~[- it shall];~~

(A) discharge the patient from involuntary commitment; and

(B) immediately report ~~[that] the discharge~~ to the court. ~~[Otherwise]~~

(c) If the local mental health authority or its designee determines that the conditions justifying the commitment continue to exist, the court shall immediately:

(i) appoint two designated examiners; and

(ii) proceed under Subsections (8) through (10).

~~[(c)]~~ (d) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period~~[-];~~ shall:

(i) at six-month intervals reexamine the reasons upon which the order of indeterminate commitment was based~~[- If]; and~~

(ii) (A) if the local mental health authority or its designee determines that the conditions justifying [that] the commitment no longer exist, ~~[that local mental health authority or its designee shall]~~ discharge the patient from its custody and immediately report the discharge to the court~~[- If]; or~~

(B) if the local mental health authority or its designee determines that the conditions justifying [that] the commitment continue to exist~~[- the local mental health authority or its designee shall];~~

(I) send a written report of ~~[those]~~ the findings upon which the determination is made to the court~~[- The]; and~~

(II) notify the patient and his counsel of record ~~[shall be notified]~~, in writing:

(Aa) that the involuntary commitment will be continued~~[-];~~

(Bb) of the reasons [for that decision;] that the involuntary commitment will be continued; and

(Cc) that the patient has the right to a review hearing by making a request to the court.

(e) Upon receiving ~~[the]~~ a request for a review hearing under Subsection

(12)(d)(ii)(B)(II)(Cc), the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (10).

~~[(12)]~~ (13) In the event that the designated examiners are unable, because a proposed patient refuses to submit to an examination, to complete that examination on the first attempt, the court shall fix a reasonable compensation to be paid to those designated examiners for their services.

~~[(13)]~~ (14) (a) Any person committed as a result of an original hearing or a person's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order.

(b) The petition described in Subsection (14)(a) must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. ~~[The]~~

(c) Except as provided in Subsection (14)(b), the new hearing shall~~[- in all other respects,]~~ be conducted in the manner ~~[otherwise permitted]~~ described in this section.

~~[(14)]~~ (15) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.

Section 3. Section **62A-15-703** is amended to read:

62A-15-703. Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in ~~[Subsection]~~ Section 62A-15-602~~[(3)]~~; and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by the fact finder that the following circumstances clearly exist, he may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in ~~[Subsection]~~ Section 62A-15-602~~(8)~~;

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from care and treatment by the local mental health authority; and

(e) there is no appropriate less-restrictive alternative.

(5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible, and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the person who submitted the petition for commitment, and a representative of the appropriate local mental health authority shall all receive informal notice of the date and time of the proceeding. Those parties shall also be afforded an opportunity to appear and to address the petition for commitment.

(c) The neutral and detached fact finder may, in his discretion, receive the testimony of any other person.

(d) The fact finder may allow the child to waive his right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

- (v) progress notes;
- (vi) nursing notes; and
- (vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.

(ii) When a decision for commitment is made, the neutral and detached fact finder shall inform the child and his parent or legal guardian of that decision, and of the reasons for ordering commitment at the conclusion of the hearing, and also in writing.

(iii) The neutral and detached fact finder shall state in writing the basis of his decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.

(6) Absent the procedures and findings required by this section, a child may be temporarily committed to the physical custody of a local mental health authority only in accordance with the emergency procedures described in Subsection 62A-15-629(1) or (2). A child temporarily committed in accordance with those emergency procedures may be held for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall be released unless the procedures and findings required by this section have been satisfied.

(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.

(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the

Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.

(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

(10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition, or that of his parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).

(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

- (i) the original petition for commitment;
- (ii) admission notes;
- (iii) diagnosis;
- (iv) physicians' orders;
- (v) progress notes;

- (vi) nursing notes; and
(vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, his parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive his right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to his parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a

more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport him to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, his parent or legal guardian, the administrator of the more restrictive environment, or his designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or his representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating his mental illness, or increasing the risk of harm to himself or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78-3a-121. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental

health authority pursuant to this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment which may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Section 4. Section **62A-15-705** is amended to read:

62A-15-705. Commitment proceedings in juvenile court -- Criteria -- Custody.

(1) (a) Subject to Subsection (1)(b), commitment proceedings for a child may be commenced by filing a written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section 62A-15-631.

(b) Commitment proceedings under this section may be commenced only after a commitment proceeding under Section 62A-15-703 has concluded without the child being committed.

(2) The juvenile court shall order commitment to the physical custody of a local mental health authority if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that:

(a) the child has a mental illness, as defined in ~~[Subsection]~~ Section 62A-15-602~~(8)~~;

(b) the child demonstrates a risk of harm to himself or others;

(c) the child is experiencing significant impairment in his ability to perform socially;

(d) the child will benefit from the proposed care and treatment; and

(e) there is no appropriate less restrictive alternative.

(3) The local mental health authority has an affirmative duty to conduct periodic reviews of children committed to its custody pursuant to this section, and to release any child who has sufficiently improved so that the local mental health authority or its designee determines that commitment is no longer appropriate.

Section 5. Section **77-15-5** is amended to read:

77-15-5. Order for hearing -- Stay of other proceedings -- Examinations of defendant -- Scope of examination and report.

(1) When a petition is filed pursuant to Section 77-15-3 raising the issue of the defendant's competency to stand trial or when the court raises the issue of the defendant's competency pursuant to Section 77-15-4, the court in which proceedings are pending shall stay all proceedings. If the proceedings are in a court other than the district court in which the

petition is filed, the district court shall notify that court of the filing of the petition. The district court in which the petition is filed shall pass upon the sufficiency of the allegations of incompetency. If a petition is opposed by either party, the court shall, prior to granting or denying the petition, hold a limited hearing solely for the purpose of determining the sufficiency of the petition. If the court finds that the allegations of incompetency raise a bona fide doubt as to the defendant's competency to stand trial, it shall enter an order for a hearing on the mental condition of the person who is the subject of the petition.

(2) (a) After the granting of a petition and prior to a full competency hearing, the court may order the Department of Human Services to examine the person and to report to the court concerning the defendant's mental condition.

(b) The defendant shall be examined by at least two mental health experts not involved in the current treatment of the defendant.

(c) If the issue is sufficiently raised in the petition or if it becomes apparent that the defendant may be incompetent due to mental retardation, at least one expert experienced in mental retardation assessment shall evaluate the defendant. Upon appointment of the experts, the petitioner or other party as directed by the court shall provide information and materials to the examiners relevant to a determination of the defendant's competency and shall provide copies of the charging document, arrest or incident reports pertaining to the charged offense, known criminal history information, and known prior mental health evaluations and treatments.

(d) The prosecuting and defense attorneys shall cooperate in providing the relevant information and materials to the examiners, and the court may make the necessary orders to provide the information listed in Subsection (2)(c) to the examiners. The court may provide in its order for a competency examination of a defendant that custodians of mental health records pertaining to the defendant shall provide those records to the examiners without the need for consent of the defendant or further order of the court.

(3) During the examination under Subsection (2), unless the court or the executive director of the department directs otherwise, the defendant shall be retained in the same custody or status he was in at the time the examination was ordered.

(4) The experts shall in the conduct of their examination and in their report to the court consider and address, in addition to any other factors determined to be relevant by the experts:

(a) the defendant's present capacity to:

615 (i) comprehend and appreciate the charges or allegations against him;
616 (ii) disclose to counsel pertinent facts, events, and states of mind;
617 (iii) comprehend and appreciate the range and nature of possible penalties, if
618 applicable, that may be imposed in the proceedings against him;
619 (iv) engage in reasoned choice of legal strategies and options;
620 (v) understand the adversary nature of the proceedings against him;
621 (vi) manifest appropriate courtroom behavior; and
622 (vii) testify relevantly, if applicable;
623 (b) the impact of the mental disorder, or mental retardation, if any, on the nature and
624 quality of the defendant's relationship with counsel;
625 (c) if psychoactive medication is currently being administered:
626 (i) whether the medication is necessary to maintain the defendant's competency; and
627 (ii) the effect of the medication, if any, on the defendant's demeanor and affect and
628 ability to participate in the proceedings.
629 (5) If the expert's opinion is that the defendant is incompetent to proceed, the expert
630 shall indicate in the report:
631 (a) which of the above factors contributes to the defendant's incompetency;
632 (b) the nature of the defendant's mental disorder or mental retardation and its
633 relationship to the factors contributing to the defendant's incompetency;
634 (c) the treatment or treatments appropriate and available; and
635 (d) the defendant's capacity to give informed consent to treatment to restore
636 competency.
637 (6) The experts examining the defendant shall provide an initial report to the court and
638 the prosecuting and defense attorneys within 30 days of the receipt of the court's order. The
639 report shall inform the court of the examiner's opinion concerning the competency of the
640 defendant to stand trial, or, in the alternative, the examiner may inform the court in writing that
641 additional time is needed to complete the report. If the examiner informs the court that
642 additional time is needed, the examiner shall have up to an additional 30 days to provide the
643 report to the court and counsel. The examiner must provide the report within 60 days from the
644 receipt of the court's order unless, for good cause shown, the court authorizes an additional
645 period of time to complete the examination and provide the report.

(7) Any written report submitted by the experts shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the examination and the purpose or purposes for each;

(c) state the expert's clinical observations, findings, and opinions on each issue referred for examination by the court, and indicate specifically those issues, if any, on which the expert could not give an opinion; and

(d) identify the sources of information used by the expert and present the basis for the expert's clinical findings and opinions.

(8) (a) Any statement made by the defendant in the course of any competency examination, whether the examination is with or without the consent of the defendant, any testimony by the expert based upon such statement, and any other fruits of the statement may not be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the defendant's competency.

(b) Prior to examining the defendant, examiners should specifically advise the defendant of the limits of confidentiality as provided under Subsection (8)(a).

(9) When the report is received the court shall set a date for a mental hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause. The hearing shall be conducted according to the procedures outlined in Subsections 62A-15-631(9)(~~h~~) (d) through (9)(~~f~~) (h). Any person or organization directed by the department to conduct the examination may be subpoenaed to testify at the hearing. If the experts are in conflict as to the competency of the defendant, all experts should be called to testify at the hearing if reasonably available. The court may call any examiner to testify at the hearing who is not called by the parties. If the court calls an examiner, counsel for the parties may cross-examine the expert.

(10) A person shall be presumed competent unless the court, by a preponderance of the evidence, finds the person incompetent to proceed. The burden of proof is upon the proponent of incompetency at the hearing. An adjudication of incompetency to proceed shall not operate as an adjudication of incompetency to give informed consent for medical treatment or for any

other purpose, unless specifically set forth in the court order.

(11) (a) If the court finds the defendant incompetent to stand trial, its order shall contain findings addressing each of the factors in Subsections (4)(a) and (b) of this section. The order issued pursuant to Subsection 77-15-6(1) which the court sends to the facility where the defendant is committed or to the person who is responsible for assessing his progress toward competency shall be provided contemporaneously with the transportation and commitment order of the defendant, unless exigent circumstances require earlier commitment in which case the court shall forward the order within five working days of the order of transportation and commitment of the defendant.

(b) The order finding the defendant incompetent to stand trial shall be accompanied by:

(i) copies of the reports of the experts filed with the court pursuant to the order of examination if not provided previously;

(ii) copies of any of the psychiatric, psychological, or social work reports submitted to the court relative to the mental condition of the defendant; and

(iii) any other documents made available to the court by either the defense or the prosecution, pertaining to the defendant's current or past mental condition.

(12) If the court finds it necessary to order the defendant transported prior to the completion of findings and compilation of documents required under Subsection (11), the transportation and commitment order delivering the defendant to the Utah State Hospital, or other mental health facility as directed by the executive director of the Department of Human Services or his designee, shall indicate that the defendant's commitment is based upon a finding of incompetency, and the mental health facility's copy of the order shall be accompanied by the reports of any experts filed with the court pursuant to the order of examination. The executive director of the Department of Human Services or his designee may refuse to accept a defendant as a patient unless he is accompanied by a transportation and commitment order which is accompanied by the reports.

(13) Upon a finding of incompetency to stand trial by the court, the prosecuting and defense attorneys shall provide information and materials relevant to the defendant's competency to the facility where the defendant is committed or to the person responsible for assessing his progress towards competency. In addition to any other materials, the prosecuting attorney shall provide:

708 (a) copies of the charging document and supporting affidavits or other documents used
709 in the determination of probable cause;
710 (b) arrest or incident reports prepared by a law enforcement agency pertaining to the
711 charged offense; and
712 (c) information concerning the defendant's known criminal history.
713 (14) The court may make any reasonable order to insure compliance with this section.
714 (15) Failure to comply with this section shall not result in the dismissal of criminal
715 charges.

Fiscal Note**Commitment to Mental Health Authority***22-Feb-05***Bill Number HB0271S01***5:32 PM*

State Impact

There would be no increased fiscal impact from provisions of this legislation. Any potential cost savings would be relatively minor and difficult to estimate.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst